IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

SHARPE, Elizabeth, et al.

Serial No.: 09/670,635

Filed: September 26, 2000

For: METHOD AND SYSTEM FOR ARCHIVING AND RETRIEVING ITEMS BASED ON EPISODIC MEMORY OF GROUPS OF PEOPLE

Examiner: B. To

Art Unit: 2162

REPLY BRIEF

Mail Stop Appeal Brief- Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Attention: Board of Patent Appeals and Interferences

Sir:

Applicant submits this brief in reply to the Examiner's Answer mailed August 10, 2006 in the above-referenced application.

STATUS OF CLAIMS

This application contains claims 1 – 27 and 58 – 67, all of which stand rejected as obvious over prior art. Claims 28 – 57 were canceled. All rejections of claims 1-27 and 58 – 67 are appealed.

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether the outstanding §103 rejections to claims 1-27 and 66 over Shneiderman et al., "Direct Annotation: A Drag-and-Drop Strategy for Labeling Photos," July 2000 ("Shneiderman") in view of E.P. 0 678 816 A2 to Mizoguchi ("Mizoguchi") should be reversed.

2. Whether the outstanding §103 rejections to claims 58-65 over Shneiderman in view of U.S.P. 5,485,611 to Astle ("Astle") should be reversed.

3. Whether the outstanding §103 rejections to claim 67 over Mizoguchi in view of Shneiderman should be reversed.

ARGUMENT

The obviousness rejections to claims 1-27 and 58-67 must be reversed because the references, even when taken collectively, fail to teach or suggest the subject matter of the pending claims. The arguments presented in the Examiner's Answer fail to remedy the defects of the cited art identified by Appellants in the Appeal Brief and previous Responses.

The Examiner continues to assert that Shneiderman alone or in combination with other references renders the claimed invention obvious. However, the Examiner's argument relies on features not present in the cited art. In many cases, the Examiner misunderstands the cited art, the recited claims, or both. The art cited by the Examiner simply fails to make out a *prima facie* case of obviousness of the recited claims.

NONE OF THE CITED ART TEACHES THE USE OF SOCIAL GROUPS OR GROUPS OF USERS OF A MEDIA ARCHIVAL SYSTEM

The Examiner's rejections give short shrift to the claim elements that use data representing social groups to index digital media items. Essentially, the Examiner believes that, if Shneiderman's system can record information relating to people or events generally, then it must record data of social groups. In this regard, the Examiner's analysis ignores significant elements from the claims. The claims do not refer to data of groups generally; instead, the claims require operators to identify themselves as members of a social group and, thereafter, presents candidate indexing information to the operator when digital media items are being indexed. In this regard, the claims define a system that distinguishes over the prior art.

Claims 66 and 67 are exemplary. They recite, in relevant part:

receiving a user input ***identifying a social group to which an archiving user belongs,***

building a database that includes ••• index information for the digital media items, each instance of index information created from archiving input data identifying a user's response **to a query that identifies a plurality of event types previously registered as associated with the social group, and persons previously registered as members of the social group.**

Under the Examiner's analysis, Shneiderman's system records information relating to events and people and, therefore, he must disclose queries that identify both event types and persons previously registered with a social group. This simply is untrue. Shneiderman's system records this data in the abstract. There is no hint or suggestion anywhere in the reference that any such data is related to a data item that represents a social group.

The Examiner's rejections also rely on Mizoguchi and Astle to supplement the prior art rejections but these references also fail to disclose use of social group data. The cited disclosure from Mizoguchi, for example, merely shows that when a photograph is being displayed, one may press keys representing persons and places to recall previously stored information regarding such events. There is no reference to social groups whatsoever. Similarly, Astle shows only that a video segment may be indexed based on a timestamp or a representative frame from the video; there is no mention of social groups.

Thus, even if the disclosures of these references were considered together, this body of art does not teach or suggest the advantages of episodic memory systems that are claimed here. There is no reference to authenticating users as members of social groups, nor is there any disclosure to demonstrate archiving of media items based on their relevance to person data or event data values that are registered with the social group. In this regard, the Examiner disregarded claim language and important teachings from the specification.

Applicant's Appeal Brief challenged the Examiner's rejections on exactly this point. In his Answer, the Examiner provided no explanation to demonstrate how the prior art allegedly

shows this subject matter. He merely asserted without explanation that this subject matter is present. One would expect that, had Shneiderman really indexed digital media items using event or person values of social groups, that the Examiner could have given a more comprehensive explanation of exactly how Shneiderman discloses this subject matter. In point of fact, he does not; his system does not use any such information in this manner and therefore the rejections must be reversed.

Below, Applicants identify analytical errors in the Examiner's Answer on a claim-by-claim basis.

Independent Claims 58 and 62

Claims 58 and 62 recite, in part:

> authenticating an operator **as a member of a group of users**,
> identifying candidate identification values **based upon the group** with whom the operator is authenticated,
> querying the operator for selection of identification data to be associated with a digital media item, the query identifying the candidate identification values and including **valid selections of an event type and persons from the group** and time.

Again, although the claim requires that candidate identification values be based on a group of users with whom the operator has been authenticated, none of the cited art teaches or suggests this concept. The Examiner's analysis merely indicates that because the system in Shneiderman *might* be used by multiple operators, Shneiderman must disclose these elements. *See* Examiner's Answer, p. 11. Such a speculative assertion cannot uphold an obviousness rejection. While multiple operators might use the system described in Shneiderman to annotate photographs, there is no indication that the software **authenticates an operator as a member of a group of users**, or that the software operates any differently based on the person using it. In fact, Shneiderman suggests that his software is incapable of doing so since,

if multi-user functionality is added, the software will have to provide for "appropriate resolution of conflicts." Shneiderman, p. 6, lines 8-12 (citations omitted). That is, Shneiderman does not disclose that his system can arrange users into groups, or discern if a particular user is a member of a group. The reference is entirely silent on this issue.

The Examiner further argues that Shneiderman's system discloses the claimed step of "identifying ••• valid selections of an event type and persons from the group" because the system prompts the user to enter retrieval criteria including names, event, time and keywords which are annotated by the user. Examiner's Answer, p. 11. Again, this simply is incorrect. Shneiderman's system merely searches previous annotations. There is no suggestion that an operator is presented with *valid selections of an event type and persons from the group with whom the operator is authenticated.* As previously explained, Shneiderman simply does not describe or suggest arranging users of the system into groups or authenticating an operator as a member of a group.

Dependent Claims 59 and 63

Claims 59 and 63 recite that "candidate identification values for persons include names **of group members.**" In his Answer, the Examiner argues that Shneiderman's Fig. 4 depicts an "operator" and that the names available for annotation are a "group" as recited in the claims. This is not only incorrect, it is a blatant misreading of the claim. The "groups" identified by the Examiner, i.e., the group of people in the photograph and the list of names available for annotation, have no relation to the **group of users** recited in the claims. Furthermore, the master list in Shneiderman is unrelated to the operator of the system – it merely presents a list of possible annotations, based on names previously used to annotate photographs. These names have no relationship to **groups of users** of the annotating system.

Contrary to the Examiner's assertions, the fact that a set of people is pictured in a photograph or specified in a list of names does not imply that those same people form a group of users of a system for annotating the photograph.

Dependent Claims 60 and 64

Claims 60 and 64 recite in pertinent part "a flag that distinguishes high point items from other items." As clearly explained in the specification, a "high point," allows a user of the system to identify an item as associated with a particularly memorable event. *See* specification, p. 4, lines 4-8; p. 12, lines 25-31. The Examiner asserts that any of the attributes in Shneiderman, may be a "memorable indicator," and argues without explanation that annotation data such as "July 5, 2006, 12:30 p.m." (i.e., date and time) represents a particularly memorable event. Examiner's Answer, p. 12. Shneiderman's disclosure suggests, however, that such data is solicited for every stored photograph, which belies the Examiner's conclusion. The free-text annotation fields in Shneiderman allow *any* information to be entered, and do not include a mechanism for distinguishing, for example, a "particularly memorable event" from a less-memorable, but more thoroughly annotated event.

Dependent Claims 61 and 65

Claims 61 and 65 recite the use of a "trail" in archiving and retrieving media items. The term "trail" is clearly defined in the specification as "a logical or meaningful route through an archive of digital media items as perceived by the user." Specification, p. 4, lines 15-17.

The Examiner argues that the photographs displayed in Shneiderman's Figure 4 are a "trail" because "the teaching or explanation of the term trail does not import[] from the specification." Examiner's Answer, p. 13-14. This is the first time the Examiner has given any

indication of the basis for rejecting these claims. Previous Office Actions rejected these claims on the same grounds as claims 60 and 64. *See* Appeal Brief, p. 21; Amended Appeal Brief, p. 22-23.

As the Examiner should be well aware, an applicant is entitled to be his own lexicographer. *See* MPEP. § 2111.01 (III). Furthermore, "[w]here an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim." *Id.* (citing Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999)). The specification also gives specific examples of the meaning and usage of the term at page 4, lines 17-31, further defining the use of the term in the claims. The clear definition and usage in the application should be applied in interpreting the claims, not a definition created by the Examiner. *See* Phillips v. AWH Corp., 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc); Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996). Interpreting the claim language in light of the specification, it is clear that Shneiderman has no bearing on the claims. Nowhere does Shneiderman teach or suggest that the photographs shown in Figure 4 are arranged in a "logical or meaningful route... as perceived by the user." The Examiner has failed to make out a *prima facie* case of obviousness.

The Examiner's argument also fails to address each element of the claims. Specifically, Shneiderman does not teach or suggest "an identifier representing the media item's **display position in a sequence** of stored media items" as recited in claim 61 or "presenting stored media items in a sequence **as identified in the index information**" as recited in claim 65. The figure cited by the Examiner in rejecting these claims merely shows several stored photographs that are available for annotation. There is no indication that these photographs

are associated with index information that identifies each photograph's position in a sequence. Again, the Examiner has ignored the language of the claims.

Independent Claim 1

Claim 1 recites, in part, "receiving a user input identifying **a group of users to which an archiving user belongs**." In contrast, Shneiderman is silent as to any identifying information provided by a user of the system. The only user input in Shneiderman is annotations or search criteria, neither of which relate to an archiving user.

The Examiner argues that Shneiderman teaches this element because a user logs on to Shneiderman's system to annotate photographs. Examiner's Answer, p. 3. Appellants have previously explained that Shneiderman discloses no such login process. In response, the Examiner now asserts that claim 1 does not require a login process. Examiner's Answer, p. 15. Although this new argument is quite late, it also misses the point. The claim requires not merely a login but rather "a user input that identif[ies] a group of users to which [the] archiving user belongs." Shneiderman discloses no such thing.

Dependent Claims 2-13

Claim 2 recites input data that "comprises a user input **from another user** identifying a group **to which the other user belongs**." The Examiner argues that Shneiderman allows a photo to contain references to multiple persons and the same person can appear in multiple photos. Examiner's Answer, p. 15-16. According to the Examiner, a person common to two photographs "will be the bridge between [two] photos and group of member of the photo." Examiner's Answer, p. 16. This indexing method is unrelated to the claim. The one-to-many relationships described in Shneiderman only relate to storing photograph annotations. There is

no reference to a **user input** identifying a group to which **another user** belongs. The Examiner's argument again confuses persons pictured in annotated photographs with users of an archival system.

Claim 3 recites "defining group event **types** that are appropriate for **members of the group** to distinguish episodic events memorable to the group." The Examiner argues that in each photo in Shneiderman "is a group event because it presents an event with a photo having a group of people." Examiner's Answer, p. 16. Clearly, the photographs in Shneiderman may display multiple people. However, the Examiner fails to explain why this renders the claim obvious. There is no relationship between a photo of a group of people and group event **types** specific to groups of **users** of an archiving system. The photographs in Shneiderman are unrelated to group event types, and the concept of event types associated with a group of users is entirely absent from the reference.

Claims 5 and 6 are directed to the use of "high points" in archiving digital media items. The Examiner argues that the language of the claim is unclear and therefore *any* indexing information renders the claim obvious. Examiner's Answer, p. 17. However, the term "high point" is clearly described in the specification. Designating a media item as comprising a "high point" allows a user to associate the media item with a "particularly memorable event." Specification, p.4. An example of such an event is a group's last day of school. Other examples and uses of "high points" are given in the specification. *See* specification, p. 12.

The Examiner has ignored the use of this term in the specification, and continued to apply his idea of the "plain meaning" of the phrase. This is not the correct standard. The meaning of a claim term should be determined according to the usage of the term in context in the specification. *See* MPEP § 2111.01 (III); *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d

1321 (Fed. Cir. 2005) (en banc); Vitronics Corp. v. Conceptronic Inc., 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996). Based on the usage of "high point" in the specification, the Examiner is incorrect that any of "people, event type, location and date" may be a "memorable event." Shneiderman simply does not suggest the use of a high point as recited in the claims.

Claims 7 and 8 are directed to indexing and retrieving media items based on the "media type" of the items. The Examiner argues that "the digital photograph is a type of media that can be retrieved" in Shneiderman. Examiner's Answer, p. 17 (citing Shneiderman Figure 4 and p. 8, lines 37-40). While a digital photograph is certainly a type of media, it has no bearing on whether Shneiderman teaches archiving or retrieving media items **based on** a media type. In fact, if Shneiderman organized media items **by type**, it would be equivalent to no organization at all – every media item in Shneiderman is a "digital photograph." There is no other **type** of media item described or suggested in Shneiderman. Other media types, such as an audio clip, would be unusable in the system of Shneiderman; there would be no way to "drag and drop" annotations onto the media item. The cited reference therefore does not teach or suggest the elements of the claims.

Claim 9, from which claims 10-12 depend directly or indirectly, recites "receiving archiving input **identifying a plurality of digital media items** and an input identifying the digital media items to be associated **as perceived by the user**." Shneiderman only describes annotating a single photograph or searching based on pre-defined data fields; there is no suggestion that a **plurality** of media items may be grouped based on an association **perceived by the user**. The Examiner again argues that these claims are rendered obvious by the disclosure of Shneiderman that a photograph may be associated with people and dates,

and that a set of photographs may be searched by person. Examiner's Answer, p. 18. This is incorrect. The recited claims allow for episodic storage and retrieval of media items, whereas Shneiderman only allows for annotation and retrieval based on specific pre-defined data. The rejection is unsupported by the cited art.

Claim 13 recites

receiving a user **request for automatic nostalgic retrieval,**
automatically generating an initial set of said selections,
using the selections to retrieve and output digital media items,
automatically modifying one or more of the selections,
using the modified selections to retrieve and output digital media items and
repeating the modifying, and retrieval and output steps.

In contrast, Shneiderman requires a user to search stored photographs by a person's name. There is no suggestion that Shneiderman's system automatically generates or modifies selections. The Examiner argues that Shneiderman renders the claim obvious because both systems require initial user input when searching archived items. This argument ignores the clear language of the claim. Shneiderman's disclosure of a simple search-by-name function does not render the complex, automated nostalgic retrieval process recited in claim 13 obvious.

Claims 14-27

Independent claims 14, 15, and 17 are apparatus and method claims with limitations similar to those in claim 1. Claims 16 and 18-27 depend from claims 14, 15 and 17. The Examiner presents no new arguments in support of his rejection of these claims, but rejects them on the same rationale as claim 1. *See* Examiner's Answer, p. 3, 7, 19. As previously explained, Shneiderman does not suggest the use of groups as recited in the claims, such as identifying "a group to which the user belongs" (claims 14, 15 and 17) or identifying "a digital media item to be archived for the group" (claim 17). As described in the Appeal Brief, the

dependent claims also recite additional features not found in the cited art; these features were not directly addressed in the Examiner's Answer.

Independent Claims 66-67

As noted above, claims 66-67 both recite:

receiving a user input identifying a social group to which an archiving user belongs;

building a database that includes ••• index information for the digital media items, each instance of index information created from archiving input data identifying a user 's response to a query that identifies a plurality of ***event types previously registered as associated with the social group, and persons previously registered as members of the social group.***

In the Examiner's analysis, Mizoguchi and Shneiderman describe associating people's names with a photograph, and therefore must also disclose event types and persons registered with a social group. This is incorrect. The only "groups" of people described in Shneiderman are those appearing in the photographs; there is no teaching or suggestion to search stored media items based on a social group identified by a user. Mizoguchi fails to remedy this defect. Mizoguchi only describes searching photographs stored in a digital camera by a person, place, or "other data" that was previously associated with the photograph. *See* Examiner's Answer, p.8; Mizoguchi col. 10, lines 19-29. There is simply no teaching or suggestion that the photographs may be searched by valid selections of event type, persons, or time associated with a **social group** identified by an operator. The Examiner's analysis ignores the language of the claims.

THERE IS NO MOTIVATION TO COMBINE THE CITED REFERENCES

The Examiner argues that one of skill in the art would combine Shneiderman and Mizoguchi because both references "disclose the method of indexing the photo using the person, date time, event type as the attributes for indexing." Examiner's Answer, p. 14. As

previously described, the system of Mizoguchi requires a scheduling/calendaring system to organize photographs, while the system of Shneiderman allows for freetext input. *See* Mizoguchi, col. 5, lines 1-7; col. 8, lines 15-47; Shneiderman, p. 4. As stated by the Examiner, both references allow for annotation of photographs using the same types of data. One of skill in the art therefore would have no reason to combine the schedule-based system of Mizoguchi with the freetext annotation system of Shneiderman, since doing so would not provide any apparent benefit.

There is also no motivation to combine the photograph annotation system of Shneiderman with the video frame indexing system of Astle. The Examiner argues that:

> An indexing system is inherently used in Shneiderman; however, Shneiderman is silent in the use of indexing the photo with these attributes. On the other hand, Astle clearly discloses the method and process of indexing the frame. Therefore, the motivation to combine Shneiderman and Astle is to index with multiple attributes for better chance of retrieval of photo.

Examiner's Answer, p. 19. Astle allows a video clip to be indexed based on a representative frame. *See* Astle, col. 2 line 56 – col. 3, line 6; col. 6, lines 4-28. Such a system would be useless for indexing photographs as suggested by the Examiner, since each photograph is already a single frame. The video indexing system of Astle is unrelated to the photograph annotation system of Shneiderman, and one of skill in the art would have no motivation to combine the cited references.

CONCLUSION

Again, Applicants respectfully request reversal of the obviousness rejection to claims 1-27 and 58-67. The Examiner's rejections fail to demonstrate that any of the prior art references teach or suggest the principles on which the present invention is based – archiving digital media items using episodic memory of a social group of users. Although the Examiner's Answer asserts that the prior art demonstrates this feature, he has provided no analysis to explain how the references use candidate information values that are based on a social group. In short, he cannot – none of the prior art discloses this subject matter.

For the foregoing reasons, Applicants respectfully requests this Board to reverse the Examiner's outstanding rejections. These claims are allowable over the cited art.

The Commissioner is authorized to charge any fees or credit any overpayments to Deposit Account No. 11-0600.

Respectfully submitted,

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